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## ARIZONA ATTORNEY GENERAL

April 20, 1953  
Opinion No. 53-78

TO: The Honorable Barry De Rose  
Gila County Attorney  
Globe, Arizona

RE: Employment and computation of  
sentences of prisoners, sentenced  
pursuant to Section 43-201, A.C.A.  
1939.

### QUESTION NO. 1

"IS THE COUNTY OR THE SHERIFF OR THE JUSTICE OF THE PEACE LIABLE FOR ANY INJURIES WHICH A PRISONER MAY SUFFER WHILE BEING REQUIRED TO WORK UNDER SECTIONS 43-201 and 47-213a?"

First, with reference to the liability of the Justice of the Peace, it is well established and unquestionable that a judicial officer cannot be called to account in a civil action for his determination and his acts in his judicial capacity. *DAVIS v. BURREL* (1939) 51 Ariz. 220, 75 P. 2d 689. This rule has been held to apply equally to justices of the peace as well as judges of the courts of record. *WILSON v. HIRST* (1948) 67 Ariz. 197, 193 P. 2d 461.

Second, with reference to the liability of the County, the general rule, equally well settled, is that the County is not subject to liability for acts committed in the exercise of its governmental functions, unless such liability is established by direct statutory provision. *LARSON v. COUNTY OF YUMA* (1924) 26 Ariz. 367, 225 P. 1115. And the employment of prisoners has, by the weight of authority, been held to be in the exercise of a governmental function which relieves the county of liability. *CRODENIER v. STATE* (1882) 86 N.C. 51; *HOWETT v. STATE* (1921 116) Misc. 8, 189 N.Y.S. 60; *REQUELEN, MUNICIPAL CORPORATIONS*, Section 2613, and cases cited therein.

There remains to be considered the liability of the Sheriff for his own negligent acts and those of his deputies resulting in injuries to prisoners while they are employed pursuant to Sections 43-201 and 47-213a A.C.A. 1939, as amended.

The rule first announced by our court was that a public officer of a county was not liable for doing an act in a negligent manner where the county itself was exempt from liability. LARSON v. COUNTY OF YUMA, supra. However, this broad rule was substantially limited in the recent case of RUTH v. RHODES (1947) 66 Ariz. 129, 185 P. 2d 304. While retaining the rule of the LARSON case exempting public officers from liability for negligence in regard to construction defects or failure of proper upkeep of bridges and highways, it specifically announced a contrary policy in other fields of activity, both governmental and proprietary. Citing FLORIO v. SCHWITZE, 101 N.J.L. 535, 129 A. 470, the court adopted the following rule, i.e. 307:

"We think that a sound public policy requires that public officers and employees shall be held accountable for their negligent acts in the performance of their official duties, to those who suffer injury by reason of their misconduct. Public office or employment should not be made a shield to protect careless public officials from the consequences of their misfeasance in the performance of their public duties." (Emphasis supplied)

While the question is novel in this jurisdiction, in view of the above pronouncement, we conclude that the sheriff would be liable for his negligent acts resulting in injuries to prisoners in his charge. PALASCO v. HULSEN (Cal. 1935) 44 P. 2d 459. And, further, the sheriff would be liable even though the negligent acts were those of a deputy. Section 12-203 A.C.A. 1939; CHAUDOIN v. FULLER (1948) 67 Ariz. 144, 192 P. 2d 243.

We suggest that the sheriff secure adequate bond and require the same from his deputies in order to protect himself from liability for such negligent performance of official duty.

QUESTION NO. 2

"UNDER SECTION 47-213a, THE STATUTES READS THAT A PRISONER 'WHILE WORKING ON THE PUBLIC STREETS, HIGHWAYS AND OTHER WORKS . . .'

I WOULD LIKE YOUR OPINION AS TO HOW BROAD THE WORDS 'OTHER WORKS' IN THIS SECTION, AND THE WORDS 'ANY OTHER PUBLIC WORK' IN SECTION 43-201 CAN BE INTERPRETED."

Appearing in Section 47-213a A.C.A. 1939 is the term "public streets, highways and other works". Since the word "works" therein is qualified by the word "public", the question as to both Sections 47-213a and 43-201 A.C.A. 1939 involves the interpretation of the term "public works" or "public work". This term should be construed and understood according to the common and approved usage of the language, Section 1-103 A.C.A. 1939. In this connection Webster's New International Dictionary, Second Edition, defines "public works" as follows:

"All fixed works constructed or built for public use or enjoyment, \* \* \* or constructed with public funds and owned by the public; \* \* \*"

This definition has been accepted and applied in many cases, SOUTHERN SURETY CO. v. STANDARD SLAC CO., 159 N.E. 559, ELLIS v. COMMON COUNCIL OF GRAND RAPIDS, 82 N.W. 244. We approve its use in the interpretation of the sections under consideration.

QUESTION NO. 3

MAY A PARENT SENTENCED TO A TERM OF IMPRISONMENT FOR NON-SUPPORT, WITH A DIRECTION THAT HE BE EMPLOYED DURING THE TERM OF SUCH IMPRISONMENT PURSUANT TO SECTION 43-201 A.C.A. 1939, BE ALLOWED DOUBLE TIME FOR EACH DAY SO EMPLOYED?

The general rule with reference to service of sentence imposed by our courts is to be found in HOWARD v. STATE (1935) 28 Ariz. 433, 237 P. 203, 1.c. 204:

\* \* \* \* The sentence pronounced must be only that which the law annexes to the offense. In re Bonner, 151 U.S. 242, 14 S. Ct. 323, 38 L. Ed. 149. And, such sentence must be carried out as imposed, the executive officers of the state having no power either to increase or diminish its severity except as prescribed by law. \* \* \*"

Unless authority is found in our statutes to permit such double time computation, it would be unauthorized. The only possible basis for such authority may be found in Section 47-213a A.C.A. 1939, as amended, which reads:

"47-213a. Double time allowance.--Any prisoner in a city or county jail, while working on the public streets, highways and other works as a trustee outside the city or county jail and without requiring armed guards, or while holding any other position of confidence and trust either within or without the city or county jail, shall be allowed double time while so employed and each day so employed shall be counted as two (2) days in computing time on his sentence. However, in case of a breach of trust, chief of police or the board of supervisors upon recommendation of the sheriff, may declare the double time forfeited." (Emphasis supplied)

As we interpret this section it permits reduction of sentence for those prisoners who have become trustees or who hold positions of confidence and are permitted to labor on public works without armed guard. It does not apply to those prisoners who, by court order, are compelled to perform the same type of labor.

Thus, in the case of prisoners sentenced pursuant to Section 43-201 A.C.A. 1939, the rule of STATE v. HOWARD, supra, applies and a sentence imposed may not be diminished in the manner suggested.

QUESTION NO. 4

"UNDER EITHER OR BOTH OF SECTIONS 47-213a and 43-201, UPON WHOSE FINAL AUTHORITY RESTS THE DECISION AS TO WHERE THE PRISONER SHALL WORK?"

In answer to this question we refer you to Sections 47-211 and 47-212 A.C.A. 1939. Pursuant thereto, both in the case of trustees and those prisoners required to work by sentence of the court, the sheriff may exercise his discretion in deciding where they shall be employed, either within or outside the jail. However, his determination is subject to approval by the Board of Supervisors, and we must conclude therefore that the final authority rests with the Board of Supervisors.

Yours very truly,

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Assistant to the  
Attorney General